

REMARKS/ARGUMENTS

Claims 1-9, 11-21, 37, 38, 41, 47, 48, 51, 57, and 59 remain pending in the present application. New claims 69-87 have been added. Claims 10, 22-36, 39, 40, 42-46, 49, 50, 52-56, 58, and 60 were previously cancelled. No new matter has been added.

Telephone Interview and Summary

The Applicants' representative notes with appreciation the interview with Examiner Bhatnagar on July 6, 2010. During the interview, Applicants presented arguments that the examiner's statement of reasons for allowance suggest that the previously restricted and non-elected claims 22-26, 28-36, 42, 43, 52, 53, 58, and 60 should also be allowable. Non-elected claims 22-26, 28-36, 42, 43, 52, 53, 58, and 60 were recently cancelled in response to the April 1, 2010 Amendment in Response to *Ex Parte Quayle* Action Dated February 2, 2010.

The Examiner preliminarily agreed with the Applicants' argument, and further indicated reintroduction of the non-elected claims would not result in any subsequent restriction requirements. In addition, the Examiner indicated that reintroduction of the non-elected claims would only be allowed with the filing of a Request for Continued Examination ("RCE").

Allowance of Claims 1-9, 11-21, 37, 38, 41, 47, 48, 51, 57, and 59

In the May 27, 2010 Notice of Allowance, claims 1-9, 11-21, 37, 38, 41, 47, 48, 51, 57, and 59 were allowed. Further action toward allowance of these claims is respectfully requested.

New Claims 69-87

New claims 69-87 are similar to cancelled claims 22-26, 28-36, 42, 43, 52, 53, 58, and 60, which were withdrawn in the June 23, 2009 non-final Office action and cancelled in the April 1, 2010 Amendment in Response to *Ex Parte Quayle* Action Dated February 2, 2010. For at least the reasons discuss above in the Telephone Interview and Summary section, new claims 69-88 should be allowable. Further action toward allowance of these new claims is respectfully requested.

Comments on Determination of Patent Term Adjustment

In the May 27, 2010 Determination of Patent Term Adjustment under 35 U.S.C. 154(b) (“May 27, 2010 PTA Determination”), a patent term adjustment of 672 days was indicated. However, Applicants’ preliminary calculations of patent term adjustment indicates that as of May 27, 2010, Applicants’ were entitled to at least an additional 399 days of patent term adjustment, or a total of 1,071 days.

Despite having been made after the Federal Circuit decision in *Wyeth v. Kappos*, the May 27, 2010 PTA Determination fails to include the patent term adjustment that Applicants are entitled to under 35 U.S.C. § 154(b)(1)(B), also referred to as “B” delay. *See* 591 F.3d 1364 (Fed. Cir. 2010). That is, as of May 27, 2010, Applicants were entitled to an additional upward adjustment of 399 days of patent term due to PTO’s failure to issue a patent within 3 years of the actual filing date of the present application.

Correction to the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) is respectfully requested for any subsequently issued Notice of Allowance.

CONCLUSION

Applicants submit Claims 1-9, 11-21, 37, 38, 41, 48, 51, 57, 59, and 69-87 are in a condition for allowance and action toward that is respectfully requested. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (312) 425-8552.

* * * * *

It is believed that no fees are due at this time, other than the RCE fee. However, should any additional fees be required (except for payment of the issue fee), or credits be due, the Commissioner is also authorized to deduct the fees from, or to credit any overpayments to, Nixon Peabody Deposit Account No. 50-4181, Order No. 247171-000379USP1.

Respectfully submitted,

Dated: August 25, 2010

/Peter J. Prommer, Reg. No. 54743/

Peter J. Prommer, Reg. No. 54743

NIXON PEABODY LLP

300 S. Riverside Plaza, 16th Floor

Chicago, Illinois 60606-6613

(312) 425-3900 – main

(312) 425-3909 – facsimile

ATTORNEY FOR APPLICANTS